THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.9157 of 1995

Date: 07.03.2007

Between:

M/s. Hyderabad Bottling Co. Pvt. Ltd.

....Petitioner

And

Andhra Pradesh Wakf Board, rep., by its Secretary, Razaak Manzil, Public Garden Road, Hyderabad and another.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.9157 of 1995

O R D E R:

The petitioners challenge the Gazette notification, dated 16.03.1989, issued by the Secretary, A.P. Wakf Board, insofar as it relates to item at serial No.10 of Shia Wakf situated at Hyderabad City of Telangana Region.

Briefly stated, the background, in which the writ petition is filed, is as under:

The land in Survey No.29 of Yousufguda Revenue Village, admeasuring Ac.67.18 guntas was owned and held by one Nawab Fakhrul Mulk. During the revision survey, several survey numbers came to be carved out of it, including survey No.49. Nawab Fakhrul Mulk died in the year 1934. He was buried in a Tomb constructed in part of that area. Out of the total extent of Ac.67.18 guntas of land held by the Nawab Fakhrul Mulk, Ac.60.18 guntas was acquired by the Government for establishing T.B.Hospital and other institutions. As regards the

balance of Ac.7.00 and other properties held by the family, one of the daughters of Nawab Fakhrl Mulk, by name Saradarunnisa Begum, filed O.S.No.116 of 1356 Fasli in the Court at Darul Qazaath. A preliminary decree was passed on 21.11.1947. Due to the change in the adjudicatory system, the suit came to be transferred to the High Court and re-numbered as O.S.No.9/1 of 1951.

Several Miscellaneous Petitions came to be filed, one after the other, before this Court. One such petition was Application No.14 of 1975, wherein the dispute related to the extent of the property covered by the Tomb, the nature of administration of the Tomb and the persons to be entrusted with it. After hearing the parties at length, this Court passed an order, dated 15.09.1975, holding that such part of the area, which is covered by a compound wall constructed around the Tomb, would alone become part of it and any area outside the compound wall, cannot be treated as its part. As regards administration, a particular course of action was indicated.

The petitioners claim that they have purchased land out of Survey No.49, which, in turn, was part of old Survey No.29, through different sale deeds, between August and December 1994, and are in possession and enjoyment of the same. According to them, the authorities of the Wakf Board tried to interfere with their possession, on the basis

of the impugned notification. It is stated that their predecessors in title were not put on notice, before the land in Survey No.49 was notified as part of Wakf. Several other grounds were also raised.

The first respondent filed a detailed counter affidavit, opposing the claim of the petitioners. It is stated that the Tomb of Nawab Fakhrul Mulk is a Wakf, as defined under the Wakf Act, 1954 and the Tomb, together with the properties attached to it, was declared as Wakf, in accordance with the provisions of the said Act. It is also their case that necessary verification was undertaken before the impugned notification was issued. An objection is raised as to the maintainability of the writ petition also.

Sri D.Prakash Reddy, the learned senior counsel appearing for the petitioners submits that the first respondent did not verify the nature of rights in relation to the land, before it issued notification. It is stated that when the land was subject matter of a partition suit and the rights of the respective parties were finally determined by this Court, the impugned notification cannot be sustained in law. He made extensive reference to the various orders passed by this Court in the Miscellaneous Petitions filed in O.S.No.9/1 of 1951.

Sri Mohd Abdul Rafi, learned Standing Counsel for

the first respondent submits that the writ petition is not maintainable, in view of the bar contained in Section 6 of the Wakf Act, 1995 (for short 'the Act'). He submits that the legal heirs of Nawab Fakhrul Mulk have approached this Court for identical relief by filing W.P.No.12980 of 1995 and this Court declined to interfere with the same and left it open to the petitioners therein to work out their remedies, by filing a suit in a competent civil Court.

The petitioners have raised several grounds in their challenge to the impugned notification, insofar as it relates to the property in Survey No.49. Identical relief was claimed by the predecessors in title of the petitioners herein by filing W.P.No.12980 of 1995. Initially, the writ petition was dismissed on 05.07.2002 by observing that no suit can be filed by them, after expiry of one year, in view of the bar contained under Section 6 of the Act. Subsequently, that order was reviewed on 04.02.2004. After discussing the relevant provisions and decided cases, this Court took the view that the bar, under Section 6 of the Act, to file a suit beyond one year, operates only against such parties, that have been provided with an opportunity to raise objections, before the notification came to be issued. On finding that the petitioners therein were not extended such an opportunity, this Court left it open to them to file a suit. The petitioners stand on the same footing.

Therefore, the Writ Petition is disposed of, leaving it open to the petitioners to work out their remedies by filing a suit, be it in a civil Court or the A.P. Wakf Tribunal, in accordance with law. The Court, in which, the petitioners may file the suit, shall decide the matter, on its own merits, uninfluenced by any observations made in this set of proceedings. There shall be no order as to costs.

_____

07.03.2007

JSU